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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2011-0087]

Privacy Act of 1974; Department of Homeland Security/U.S. Citizenship and Immigration Services – 016 Electronic Immigration System-3 Automated Background Functions System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue the Department of Homeland Security system of records titled, “Department of Homeland Security/U.S. Citizenship and Immigration Services – 016 Electronic Immigration System-3 Automated Background Functions System of Records.” This system of records will allow the Department of Homeland Security/U.S. Citizenship and Immigration Services to collect and maintain certain biographic information about individuals in the U.S. Citizenship and Immigration - Services Electronic Immigration System and its legacy systems in order to detect duplicate and related accounts and identify potential national security concerns, criminality, and fraud to ensure that serious or complex cases receive additional scrutiny. This system of records notice is being updated to clarify the data retention policy. Additionally, the Department of Homeland Security is issuing a Final Rule elsewhere in the Federal Register, to exempt this system of records from certain provisions of the

Privacy Act. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This system will be effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number DHS-2011-0087 by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 703-483-2999.
- Mail: Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.
- Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.
- Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald K. Hawkins (202-272-8030), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW, Washington, D.C. 20529. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. § 552a, the Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS) proposes to update and reissue the DHS system of records titled, “DHS/USCIS-016 Electronic Immigration System-3 Automated Background Functions System of Records.” This system of records notice is being updated to clarify the data retention policy and to recognize the issuance of a Final Rule exempting the system from portions of the Privacy Act. DHS received no public comments for this system of records notice. Consequently, DHS is not making any changes in response to public comments.

DHS/USCIS is creating a new electronic environment known as the Electronic Immigration System (USCIS ELIS). USCIS ELIS allows individuals requesting a USCIS benefit to register online and submit certain benefit requests through the online system. This system will improve customer service; increase efficiency for processing benefits; better identify potential national security concerns, criminality, and fraud; and create improved access controls and better auditing capabilities.

DHS and USCIS are promulgating the regulation “Immigration Benefits Business Transformation, Increment I” (August 29, 2011, 76 FR 53764) to allow for USCIS to transition to an electronic environment. This regulation will assist USCIS in the transformation of its operations by removing references and processes that inhibit the use of electronic systems or constrain USCIS’s ability to respond to changing workloads, priorities, and statutory requirements.

Applicants and petitioners (Applicants); co-applicants, beneficiaries, derivatives, dependents, or other persons on whose behalf a benefit request is made or whose

immigration status may be derived because of a relationship to the Applicant (Co-Applicants); and their attorneys and representatives accredited by the Board of Immigration Appeals (Representatives) may create individualized online accounts. These online accounts help Applicants and their Representatives file for benefits, track the status of open benefit requests, schedule appointments, change their addresses and contact information, and receive notices and notifications regarding their particular cases. Through USCIS ELIS, individuals may submit evidence electronically. Once an individual provides biographic information for one benefit request, USCIS ELIS uses that information to pre-populate any future benefit requests by the same individual. This eases the burden on an individual so he or she does not have to repeatedly type in the same information and also reduces the number of possible errors.

USCIS is publishing three System of Records Notices (SORNs) to cover the following three distinct processes of this new electronic environment and the privacy and security protections incorporated into USCIS ELIS:

- 1. Temporary Accounts and Draft Benefit Requests:** The Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests SORN (DHS/USCIS-014) addresses temporary data provided by Applicants or Representatives. This temporary data includes temporary accounts for first-time Applicants and draft benefit request data from first-time Applicants, Applicants with permanent accounts, and Representatives. Applicants first interact with USCIS ELIS by creating a temporary account, setting notification preferences, and drafting the first benefit request. If a first-time Applicant does not begin drafting a benefit request within 30 days of opening

the temporary account, USCIS ELIS deletes the temporary account. If he or she does not submit the benefit request within 30 days of starting a draft benefit request, USCIS ELIS deletes the temporary account and all draft benefit request data. If a first-time Applicant submits the benefit request within 30 days, USCIS ELIS automatically changes the status of the account from temporary to permanent. Applicants with permanent USCIS ELIS accounts or Representatives may also draft benefit requests. USCIS ELIS deletes all draft benefit requests if they are not submitted within 30 days of initiation.

2. Account and Case Management: The Electronic Immigration System-2 Account and Case Management SORN (DHS/USCIS-015) addresses the activities undertaken by USCIS after Applicants or Representatives submit a benefit request. USCIS ELIS uses information provided on initial and subsequent benefit requests and subsequent collections through the Account and Case Management process to create or update USCIS ELIS accounts; collect any missing information; manage workflow; assist USCIS adjudicators as they make a benefit determination; and provide a repository of data to assist with future benefit requests. In addition, USCIS ELIS processes and tracks all actions related to the case, including scheduling appointments and issuing decision notices and/or proofs of benefit.

3. Automated Background Functions: The Electronic Immigration System-3 Automated Background Functions SORN (DHS/USCIS-016) addresses the actions USCIS ELIS takes to detect duplicate and related accounts and identify

potential national security concerns, criminality, and fraud to ensure that serious or complex cases receive additional scrutiny.

Electronic Immigration System-3 Automated Background Functions (USCIS ELIS Automated Background Functions) uses biographic information stored in Electronic Immigration System-2 Account and Case Management (USCIS ELIS Account and Case Management) to run a series of automated rules on that information, generating results, and assigning confidence and severity levels to the results to assist USCIS personnel reviewing the results. The results of all USCIS ELIS Automated Background Functions are returned to the account or case and are used and shared according to the Electronic Immigration System-2 Account and Case Management SORN. USCIS ELIS Automated Background Functions use this information to detect duplicates and related records, and to identify national security concerns, criminality, and fraud to ensure that serious or complex cases receive additional scrutiny.

Detect Duplicates and Related Records

In order to identify duplicate USCIS ELIS accounts, other USCIS records pertaining to the individual, and relationships among individuals with USCIS records, USCIS ELIS Automated Background Functions maintain a copy of biographical information from USCIS ELIS accounts and cases (described in the Electronic Immigration System-2 Account and Case Management SORN), as well as the following legacy USCIS systems: Alien File/Central Index System; Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum (CLAIMS 3); Computer Linked Application Information Management System (CLAIMS 4); Refugees, Asylum, and Parole System (RAPS); and Fraud Detection and National

Security Data System (FDNS-DS).

Background, National Security, and Criminality Checks

USCIS ELIS Automated Background Functions automatically perform background checks when new information is received by querying several DHS, Federal Bureau of Investigation (FBI), and other agencies' law enforcement and/or immigration systems, as appropriate, to identify national security and/or law enforcement concerns.

Identification of Possible Fraud

Results from the de-duplication and relationship analysis and background checks are run against a set of USCIS analyst-derived rules to assign confidence levels indicating how strongly the information in one record matches another record, as well as a severity level indicating possible criminal, national security, or fraudulent activity. Each result will have a summary which will include the rule used to produce the result and any alerts or flags to control subsequent processing. Once the rules have returned results and confidence and severity levels are assigned, USCIS ELIS Automated Background Functions will route the case to the appropriate USCIS personnel based on the nature of the results.

Information is shared outside of DHS to perform system queries as part of USCIS ELIS Automated Background Functions. USCIS shares biographic information with the Department of State (DOS) and receives visa information in return. USCIS provides biometric and biographic information to, and receives criminal history information from, the FBI. USCIS provides biographic information to, and receives biographic and immigration court data from, the Department of Justice (DOJ) Executive Office of Immigration Review (EOIR).

The proposed routine uses are compatible with the purpose of the original collection. The routine uses have been tailored to ensure that the information within the system is shared through USCIS Automated Background Functions when an individual requests a benefit. Generally, all other sharing will occur out of the Electronic Immigration System-2 Account and Case Management SORN. However, pursuant to (b)(1) of the Privacy Act, this information may be shared with other DHS components pursuant to its mission within the Department.

USCIS collects, uses, and maintains benefit request eligibility results pursuant to 8 U.S.C. §1103 and 8 U.S.C. §1225.

Consistent with DHS's information sharing mission, information stored in USCIS ELIS Automated Background Functions may be shared with other DHS components, as well as appropriate federal, state, local, tribal, territorial, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need-to-know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

DHS is issuing a Final Rule to exempt this system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. § 552a(k)(2), elsewhere in the Federal Register. Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from a law enforcement system has been exempted in that source system under 5 U.S.C. § 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance

with this rule. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of DHS/USCIS-016 Electronic Immigration System-3 Automated Background Functions System of Records.

In accordance with 5 U.S.C. § 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

DHS/USCIS-016

System name:

DHS/USCIS-016 Electronic Immigration System-3 Automated Background Functions

Security classification:

Unclassified, sensitive, for official use only, law enforcement sensitive

System location:

Records are maintained at the United States Citizenship and Immigration Services Headquarters in Washington, D.C. and field offices.

Categories of individuals covered by the system:

USCIS ELIS Automated Background Functions stores and/or uses information about individuals who previously received or petitioned for benefits in USCIS ELIS, or have information in USCIS legacy systems described under “records source,” under the Immigration and Nationality Act (INA), as amended. These individuals include: Applicants and petitioners (Applicants); co-applicants, beneficiaries, derivatives, dependants or other persons on whose behalf a benefit request is made or whose immigration status may be derived because of a relationship to the Applicant (Co-Applicants); attorneys and representatives accredited by the Board of Immigration Appeals (Representatives); and individuals that assist in the preparation of the benefit request.

Categories of records in the system:

- ELIS Account Number
- Name
- Date of Birth
- Place of Birth
- Country of Citizenship
- Gender
- Social Security Number, if applicable

- Alien Number
- Marital Status
- Family Relationships
- Current and Past Address Information
- Current and Past Telephone Information
- Case ID Number (specific to the benefit application)
- Application Type
- Passport Information
- Drivers License Number
- Email Address
- Eye Color
- Hair Color
- Height
- Attorney or Accredited Representative Information
- Employment Information
- FBI Number, if available
- Entry/Exit Data
- Rules used to generate results, assign confidence and severity levels, assign system flags, and route cases

Authority for maintenance of the system:

8 U.S.C. §1103 and 8 U.S.C. §1225.

Purpose(s):

The purpose of USCIS ELIS Automated Background Functions is to assist USCIS

personnel in detecting duplicate and related accounts; identifying potential national security concerns, criminality, and fraud; as well as ensuring that serious or complex cases receive additional scrutiny.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. § 552a(b)(3) as follows:

A. To DOJ, including U.S. Attorney Offices, or other federal agencies conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. any employee of DHS in his/her official capacity;
3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. the U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the

record pertains.

C. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. §§ 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS

officers and employees.

G. To the Department of Justice (DOJ) Executive Office of Immigration Review (EOIR) in the processing of petitions or applications for benefits under INA, and all other immigration and nationality laws including treaties and reciprocal agreements.

H. To DOS in the processing of petitions or applications for benefits under INA, and all other immigration and nationality laws including treaties and reciprocal agreements.

Disclosure to consumer reporting agencies:

None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

Retrievability:

Records may be retrieved by any of the data elements listed above or combination thereof.

Safeguards:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system

is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

Retention and disposal:

USCIS is currently in negotiations with NARA for approval of the USCIS ELIS data retention and archiving plan. USCIS proposes retaining the copy of biographic data stored in USCIS ELIS Automated Background Functions as long as the records exist in the source system. However, USCIS is reviewing its needs for the information as it transitions to a fully electronic environment and may amend its retention, as needed.

USCIS proposes that, in compliance with NARA General Records Schedule 24, section 6, "User Identification, Profiles, Authorizations, and Password Files," internal user accounts will be destroyed or deleted six years after the user account is terminated, or when no longer needed for investigative or security purposes, whichever is later.

System Manager and address:

The DHS system manager is the Chief, Records Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW, Washington, D.C. 20529.

Notification procedure:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it may maintain law enforcement information. However, DHS/USCIS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the National Records

Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010. Specific FOIA contact information can be found at <http://www.dhs.gov/foia> under "Contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, S.W., Building 410, STOP-0655, Washington, D.C. 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. § 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov> or 1-866-431-0486. In addition you should:

- Provide an explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Record access procedures:

See “Notification procedure” above.

Contesting record procedures:

See “Notification procedure” above.

Record source categories:

Records are retrieved through, but not stored in, the USCIS ELIS Automated Background Functions from the following USCIS, DHS, and other federal agency systems of records:

- DHS/USCIS-015 - Electronic Immigration System-2 - Account and Case Management System of Records;
- DHS/USCIS-001 - Alien File, Index, and National File Tracking System of Records;
- DHS/USCIS-007 - Benefits Information System (BIS);
- DHS/USCIS-010 - Asylum Information and Pre-Screening;
- DHS/USCIS-006 - Fraud Detection and National Security Data System (FDNS-DS);
- DHS/CBP-011 - U.S. Customs and Border Protection TECS;

- DHS/ICE-001 - Student and Exchange Visitor Information System (SEVIS);
- DHS/ICE-011 - Immigration Enforcement Operational Records System (ENFORCE);
- DHS/USVISIT-001 - Arrival and Departure Information System (ADIS);
- DHS/USVISIT-0012 - DHS Automated Biometric Identification System (IDENT);
- Department of State Consular Consolidated Database (CCD);
- JUSTICE/EOIR-001 - Records and Management Information System;
- JUSTICE/FBI-002 - FBI Central Records System; and
- JUSTICE/FBI-009 - Fingerprint Identification Records System (FIRS).

In order to resolve identity and relationships, records stored in USCIS ELIS Automated Background Functions are obtained from the following USCIS systems of records: Electronic Immigration System-2 Account and Case Management; Alien File, Index, and National File Tracking; Fraud Detection and National Security Data System; Benefits Information System; and Asylum Information and Pre-Screening.

Exemptions claimed for the system:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act pursuant to 5 U.S.C. § 552a(k)(2); 5 U.S.C. §§ 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from another system has been exempted in that source system under 5 U.S.C. § 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional

exemptions in accordance with this rule.

Dated: November 2, 2011

Mary Ellen Callahan

Chief Privacy Officer,

Department of Homeland Security.

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